



California Fair Political Practices Commission

February 9, 1988

Leroy Y. Fong
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-88-024

Dear Mr. Fong:

You have requested advice on behalf of Mr. Alvin Pak, a former employee of the California Public Utilities Commission, concerning his duties under the "revolving door" provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May Mr. Pak represent the San Diego Gas & Electric Company before the California Public Utilities Commission in the implementation phase of a new rate design policy and rate making scheme for the natural gas industry in California? Mr. Pak participated in the investigation phase of the new industry-wide rate design policy and rate making scheme as an employee of the California Public Utilities Commission.

CONCLUSION

Based on the specific facts you have provided, Mr. Pak may represent San Diego Gas & Electric Company before the California Public Utilities Commission in the implementation phase of a new rate design policy and rate making scheme for the natural gas industry in California.

FACTS

Mr. Pak is a former employee of the California Public Utilities Commission (the "PUC"). He left his employment with

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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the PUC in December 1986. He currently is an employee of San Diego Gas & Electric Company ("SDG & E").

From 1984 through 1986, the PUC conducted investigations into regulation of the natural gas industry in California. The primary categories involved in the investigations, and on which substantive orders were issued, were long-term transportation, rate redesign, and implementation of the redesign. In December 1986, after public hearings and receipt of invited comments, the PUC issued orders describing a new rate design policy and rate making scheme which were intended to be implemented January 1, 1987. These orders have industry-wide applicability. SDG & E is one of the utilities affected by these orders. SDG & E submitted comments on the proposed rate design policy and rate making scheme.

During this period, Mr. Pak served as staff counsel to PUC Commissioner Victor Calvo. In this capacity, Mr. Pak participated in the investigations concerning regulation of the natural gas industry. You have informed us that Mr. Pak's participation in the investigations ended in August 1986, prior to initiation of the implementation phase of the hearing, during which rates for individual utilities were considered and established. You also have informed us that Mr. Pak prepared an informational memorandum in November 1986 for Commissioner Calvo. In the memorandum, he traced the history of the investigations but did not discuss the issues raised by the proposed regulations or possible resolutions thereof. These matters were addressed by another staff member in a separate memorandum.

ANALYSIS

Sections 87401 and 87402 restrict the activities of former state administrative officials. These "revolving door" provisions prohibit any former state administrative official from representing, aiding, advising, counseling, consulting, or assisting in representing any person, for compensation, in connection with any judicial, quasi-judicial or other proceedings in which he participated as a state employee. Accordingly, Mr. Pak may not represent his current employer, SDG & E, before the PUC in connection with any proceeding in which he participated while he was employed by the PUC.

Section 87400(c) provides that a "proceeding" is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency." (Emphasis added.) Based on the facts

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you have provided, Mr. Pak's participation in the investigation phase of the rate design policy and rate making scheme for the natural gas industry did not constitute participation in a "proceeding" for purposes of the "revolving door" provisions of the Act. We base this conclusion on the fact that the rate design policy and rate making scheme for the natural gas industry had an industry-wide application and did not focus on specific utilities. (See Bersinger Advice Letter, No. A-82-209, copy enclosed.)

Accordingly, Mr. Pak may represent SDG & E before the PUC in the implementation phase of the PUC hearings concerning application of the new rate design policy and rate making scheme to SDG & E.

If you have any further questions concerning this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosure

LEROY Y. FONG

LAW OFFICES OF
OLSON, CONNELLY & HAGEL
431 J STREET, FOURTH FLOOR
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 442-2952

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

JAN 8 2 43 PM '88

January 7, 1988

Ms. Diane Griffiths
Fair Political Practices Commission
Legal Division
428 J Street, Seventh Floor
Sacramento, California 95814

RE: Request for Advice

Dear Ms. Griffiths:

On behalf of our client Alvin Pak, we are requesting advice as to the applicability of the conflict of interest provisions of the Political Reform Act (PRA) under the facts set forth below.

Mr. Pak is a former employee of the California Public Utilities Commission (PUC) who is now an employee of San Diego Gas & Electric Company (SDG&E). Mr. Pak left his employment with PUC in December, 1986.

From 1984 through 1986, the PUC conducted investigations into the regulation of the natural gas industry in California. The primary categories involved in the investigations, and on which substantive orders were issued, were long-term transportation, rate re-design, and implementation of the re-design. After public hearings and receipt of invited comments, in which SDG&E participated, orders were issued in December 1986 describing a new rate design policy and rate making scheme which were intended to be implemented January 1, 1987. These orders were generic in nature in that they have industry-wide applicability.

During the period in question Mr. Pak served as staff counsel to PUC Commissioner Victor Calvo.

Mr. Pak participated in the investigations while employed by the PUC, but his participation ended in August, 1986, prior to the initiation of the implementation phase of the hearings, which would consider and establish rates for individual utilities. Mr. Pak did prepare an informational memorandum in November 1986 for Commissioner Calvo tracing the history of the investigations. He did not discuss in the memorandum the issues raised by the proposed regulations or possible resolutions thereof. These matters were addressed by another staff member in a separate memorandum.

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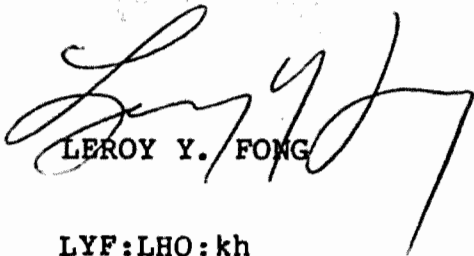
Mr. Pak now seeks advice as to whether he may participate on behalf of SDG&E in the "implementation phase" of the PUC hearings without violating provisions of the PRA.

We feel that Mr. Pak may participate on behalf of SDG&E because the matter on which he worked as an employee of the PUC did not affect a specific party, but affected all members of an industry. We make reference to advice letters A-82-209, January 24, 1983; A-86-162, June 10, 1986; and A-80-12-105, December 4, 1980.

Thank you for your assistance and should you require additional information please contact the undersigned.

Very truly yours,

OLSON, CONNELLY & HAGEL



LERROY Y. FONG

LYF:LHO:kh

cc: Mr. Alvin Pak

LEROY Y. FONG

LAW OFFICES OF
OLSON, CONNELLY & HAGEL
431 J STREET, FOURTH FLOOR
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 442-2952

OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

January 7, 1988

Ms. Diane Griffiths
Fair Political Practices Commission
Legal Division
428 J Street, Seventh Floor
Sacramento, California 95814

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Thank you for your assistance and should you require additional information please contact the undersigned.

Very truly yours,

OLSON, CONNELLY & HAGEL



LEROY Y. FONG

LYF:LHO:kh

cc: Mr. Alvin Pak



California Fair Political Practices Commission

January 11, 1988

Leroy Y. Fong
Olson, Connelly & Hagel
431 J Street, Fourth Floor
Sacramento, CA 95814

Re: 88-024

Dear Mr. Fong:

Your letter requesting advice under the Political Reform Act was received on January 8, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Alvin Pak